IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

Tr.P(C).No. 241 of 2006()

OP.561/2004 of FAMILY COURT,THRISSUR

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: PETITIONER

MARGRET, AGED 44 YEARS,
W/0.JOY MATHEW, D/O.E.V.PAVU,
EDATHURUTHIKKARAN HOUSE,
NELLIKKUNNU, THRISSUR, NOW RESIDING AT A5,
GARDEN WOODS, CHAKKUNGAL ROAD,
PALARIVATTOM, ERNAKULAM.

BY ADV. SMT.LEKHA SURESH

RESPONDENTS:

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1. JOY MATHEW, S/O.E.V.MATHEW,
CHANGALAYI HOUSE, P.O.MULLASSERY,
THRISSUR.

2. JAMES PAUL, AGED ABOUT 47 YEARS,
S/O.PAUL, KACHAPPILLY HOUSE, ANGAMALY SOUTH,
ANGAMALY, ERNAKULAM.

3. PAULY, AGED ABOUT 47 YEARS,
S/O.THOMAS, MUTTIKKARAN HOUSE,
10-A, 10TH FLOOR, HARBOUR POINT,
KURISUPPALLI ROAD, RAVIPURAM,
ERNAKULAM.

BY ADV. SRI.N.P.SAMUEL
SRI.P.V.VINIL

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.Sasidharan Nambiar,J.

Tr.P(C).No.241 of 2006

Dated this the 19th day of December,2006

O.R.D.E.R

Petitioner is the wife. First respondent is the husband and other respondents are her in-laws. First respondent filed O.P.561/04 before Family Court, Thrissur for divorce. This petition is filed for transfer of that case to Family Court, Ernakulam contending that petitioner is residing at Ernakulam and there is nobody else for her to accompany her and her children are studying for plus two at Ernakulam and B.Tech course at Coimbatore. Learned counsel appearing for respondent opposed the application and filed a detailed objection.

2. Learned counsel appearing for petitioner and respondents were heard.

3. The argument of learned counsel appearing for respondents is that under section 24 of the Code of Civil Procedure a petition pending before

Family Court, Thrissur cannot be transferred to Family Court, Ernakulam as Family Court, Ernakulam is not competent to try that case and this court can order a transfer only to a court which is competent to try that suit and therefore Family Court, Ernakulam has no jurisdiction to try the suit. I cannot agree with the submission made. If that interpretation is to be given,then provisions of section 24 of the Code of Civil Procedure will be redundant. Take the case where there is only one Munsiff Court in a particular Taluk. If that interpretation of Section 24 of the Code is accepted, and a case can only be transferred to a court having territorial jurisdiction, then the case cannot be transferred to any other court. That is not the ambit and scope of section 24. The competency contemplated under the section is not territorial jurisdiction. But the competency intended is the competency to try the suit. Family Court, Ernakulam is competent to try a petition for divorce.

Considering the fact that petitioner is the wife and first respondent is employed at Bangalore, it does not make any difference whether the case is tried at Thrissur or Bangalore. In such circumstance, the fact that case was pending for two years or that petitioner appeared and was contesting the case at Thrissur is also not a ground to refuse the transfer.

The petition is allowed. O.P.561/04 on the file of Family Court, Thrissur is withdrawn and transferred to Family Court, Ernakulam for disposal in accordance with law.

M.Sasidharan Nambiar
Judge

tpl/-

M.SASIDHARAN NAMBIAR, J.

CRL.R.P.NO. /97

ORDER

MARCH,2006